

**SUMMARY REPORT OF INVESTIGATION<sup>1</sup>****I. EXECUTIVE SUMMARY**

Date of Incident:	July 19, 2015
Time of Incident:	3:48 a.m.
Location of Incident:	[REDACTED] W. 21 <sup>st</sup> Street
Date of COPA Notification:	July 19, 2015

On July 19, 2015, at approximately 3:44 a.m., Officers Zaya Mikhail, #1244, and Matthew Koch, #13746 (collectively “the Officers”), (Beat1231R), responded to a call of an attempted robbery at [REDACTED] and [REDACTED]. The Office of Emergency Management and Communication (“OEMC”) provided a description of the subject, now known to be [REDACTED]. OEMC described the subject as a Hispanic male, wearing a dark shirt and blue jeans. The officers responded to the call and drove east on the 2300 block of W. 21<sup>st</sup> Street in a marked Ford Explorer.

Upon arrival, the Officers observed [REDACTED] walking westbound on the north sidewalk of 21<sup>st</sup> Street. Officer Mikhail stopped the vehicle and both officers exited and approached [REDACTED] on foot. Officer Mikhail ordered [REDACTED] to stop. [REDACTED] said, “No,” and continued to walk west on 21<sup>st</sup> Street. Officer Mikhail again ordered [REDACTED] to stop. In front of [REDACTED] W. 21<sup>st</sup> Street, [REDACTED] turned around and pointed a handgun at Officer Mikhail. In response, Officer Mikhail fired three shots at [REDACTED] striking him in the abdomen, right leg and right thumb. [REDACTED] survived his injuries.

Subsequently, [REDACTED] ran west on 21<sup>st</sup> Street and the Officers pursued him on foot. [REDACTED] dropped his firearm and ran down the alley parallel to Western Avenue. [REDACTED] approached the intersection of the alley and ran northbound. Officer Koch continued to pursue [REDACTED] after he ran northbound down the alley. Meanwhile, Officer Mikhail ran back to [REDACTED] W. 21<sup>st</sup> Street to secure the dropped firearm. The Illinois State Police (“ISP”) later tested the firearm. The DNA found on the firearm matched [REDACTED] DNA.

[REDACTED] circled around the alley and entered the gangway at the rear of [REDACTED] W. 21<sup>st</sup> street and continued towards the front porch. Officer Koch apprehended [REDACTED] on the front porch and placed him into custody. COPA’s investigation concluded that Officer Mikhail’s use of deadly force was within policy.

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<sup>1</sup> On September 15, 2017, the Civilian Office of Police Accountability (COPA) replaced the Independent Police Review Authority (IPRA) as the civilian oversight agency of the Chicago Police Department. Therefore, this investigation, which began under IPRA, was transferred to COPA on September 15, 2017, and the recommendation(s) set forth herein are the recommendation(s) of COPA.

## II. INVOLVED PARTIES

Involved Officer #1:	MIKHAIL, Zaya, star #12044, employee ID# [REDACTED], Date of Appointment December 5, 2005, Date of Birth [REDACTED], male, white.
Subject #1:	[REDACTED] Date of Birth December 2, 1973, male, Latino

## III. ALLEGATIONS

Any discharge of an officer's firearm results in a mandatory notification to COPA. This investigation was initiated pursuant to such notification. However, COPA determined that there was no evidence of misconduct requiring allegations against Officer Mikhail.

## IV. APPLICABLE RULES AND LAWS

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### General Orders

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1. General Order 03-02-03, § IIA
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### State Laws

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1. 720 ILCS 5/7-5 (1986)
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## V. INVESTIGATION<sup>2</sup>

### a. Interviews

#### CPD Interviews:

##### **Involved Officer Zaya Mikhail – IPRA Statement July 24, 2015**

Officer Mikhail stated that on July 19, 2015, he was assigned to routine patrol with Officer Koch. Both officers were in full uniform and driving a marked Ford Explorer. While on patrol, the officers were assigned to assist Sergeant Orozco in responding to an armed robbery. Officer Mikhail stated that they were given a description of the suspect, specifically "a male Hispanic, with a dark shirt and jeans."

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<sup>2</sup> COPA conducted a thorough and complete investigation. The following is a summary of the material evidence gathered and relied upon in our analysis.

Officer Mikhail stated that while he and his partner were traveling eastbound on 21<sup>st</sup> Street he observed someone, now known to be [REDACTED] who Officer Mikhail stated matched the subject's description. [REDACTED] was wearing a brown shirt and jeans. During his statement, Officer Mikhail did not say what [REDACTED] was wearing, but stated "this guy matche[d] the description exactly . . ." After seeing [REDACTED] Officer Mikhail told Officer Koch that he saw someone matching the description of the suspect.

Officer Mikhail stated that he stopped the vehicle, got out and said to [REDACTED] "Police. Stop." [REDACTED] said, "No," and continued walking westbound down the sidewalk. Officer Mikhail then walked from the street to the sidewalk, following [REDACTED]. Officer Mikhail stated that while on the sidewalk, [REDACTED] turned around, looked at him, pulled at his shirt and then pulled out a handgun from his waist. At this point [REDACTED] was approximately ten feet away from Officer Mikhail. [REDACTED] then back-peddled approximately fifteen feet with the handgun pointed at Officer Mikhail.

Officer Mikhail drew his weapon when [REDACTED] turned around. Officer Mikhail stated that when he saw [REDACTED] handgun he feared for his life and shot three times in quick succession. After Officer Mikhail fired the third shot, [REDACTED] dropped his handgun and was bleeding. After [REDACTED] dropped the handgun, he turned and ran westbound down the sidewalk of 21<sup>st</sup> Street.

When Officer Mikhail fired his weapon, Officer Koch exited the vehicle and was parallel to [REDACTED] with [REDACTED] on the sidewalk and Officer Koch in the street. As [REDACTED] ran westbound, both Officers pursued him on foot. Officer Mikhail stated that Officer Koch was "right behind" [REDACTED] and that he was running behind Officer Koch. Officer Mikhail stated that [REDACTED] turned right and started running northbound down the alley. [REDACTED] then turned and started running eastbound down the alley, which parallels 21<sup>st</sup> Street.

Officer Mikhail stated that when [REDACTED] turned to run eastbound down the alley he became concerned that [REDACTED] would circle back and recover his weapon. To prevent this, Officer Mikhail turned around and returned to 21<sup>st</sup> Street to secure the firearm [REDACTED] dropped. Officer Mikhail stated that when he secured the firearm he noticed that it was placed in slide lock. Officer Mikhail stated that he never touched the firearm.

Officer Mikhail witnessed Officer Koch place [REDACTED] into custody but was unable to assist him due to a locked gate. After Officer Koch placed [REDACTED] into custody, Officer Mikhail requested medical attention for [REDACTED]. He also requested a supervisor and additional back-up units.

#### **Witness Officer Matthew Koch – IPRA Statement on July 21, 2015**

According to Witness Officer Matthew Koch, he was working with Officer Mikhail on July 19, 2015, and was assigned to routine patrol. Officer Koch stated that on July 19, 2015 they received a call over the radio that there was a man with a gun who was attempting to rob someone near 21<sup>st</sup> Street and [REDACTED]. Officer Koch stated that he asked for clarification, specifically a description of the suspect and was told, "a male Hispanic with a dark shirt and

jeans." Officer Koch stated that almost immediately after they received the description of the suspect, they saw a person matching that description, now known to be [REDACTED]. At the time he initially spotted [REDACTED] Officer Koch explained that he was a passenger in a marked Ford Explorer traveling eastbound on 21<sup>st</sup> Street and that [REDACTED] was on the northern sidewalk of 21<sup>st</sup> Street walking westbound.

Officer Koch stated that upon seeing [REDACTED] he and Officer Mikhail exited the vehicle, walked toward the back of the vehicle toward [REDACTED] but remained on the street. Officer Mikhail also walked toward [REDACTED] but was on the sidewalk. Officer Mikhail told [REDACTED] "Police. Stop." [REDACTED] said, "No," and started walking faster. Officer Koch stated that within a second or two [REDACTED] turned around, reached into his waistband, pulled a gun and pointed it at him and then at Officer Mikhail. Officer Mikhail then fired three shots. Officer Koch stated that he was not aware of whether any of the shots hit [REDACTED].

Officer Koch stated that after Officer Mikhail fired, [REDACTED] dropped his firearm and started running westbound on the sidewalk. Officer Koch pursued [REDACTED] on foot while remaining in the street. Officer Koch followed [REDACTED] as he turned north and started to run down an alley. [REDACTED] then approached a "T section" of the alley, turned right and started running east. Officer Koch stated that [REDACTED] ran past approximately two houses, pushed the gate of a house open on the south side of the alley and ran into the gangway. Officer Koch stated that during the pursuit he used his radio to report that shots were fired by the police and provide an update of the direction [REDACTED] was running.

Officer Koch stated that as [REDACTED] approached the front of a residence he told him to get on the ground and [REDACTED] complied. Officer Koch handcuffed [REDACTED] after he voluntarily got on the ground. Officer Koch explained that he never lost sight of [REDACTED] during the pursuit but was unaware of Officer Mikhail's location. Officer Koch called for an ambulance after detaining [REDACTED].

Officer Koch stated that he later saw [REDACTED] firearm on the ground and noticed it was in slide lock. A detective later told him that [REDACTED] firearm malfunctioned and would not be able to shoot.

### Civilian Interviews

#### Subject [REDACTED] – IPRA Statement on July 20, 2015

According to Manual [REDACTED] at the time of the incident he was living at [REDACTED] W. 21<sup>st</sup> Street with his cousin, Dora Guerro, and her husband, [REDACTED] stated that on the night of the incident he was at a friend's house, where the two shared a twelve pack of beer. The friend's house is located approximately three to five houses east of his cousin's house. [REDACTED] stated that on the night of the incident he was wearing blue jeans, a dark brown long sleeve shirt and a white hat.

[REDACTED] stated that he was walking home from the friend's house when he saw a police car come to a stop. [REDACTED] ran when he saw the police car, an action he attributed to

being scared and intoxicated. He explained that the officers exited the vehicle and said, "Hey." [REDACTED] stated that as he was running a white male officer shot him "several times." According to [REDACTED] he sustained five gunshot wounds.

[REDACTED] ran into the gangway and toward the front porch of his residence where the officers tackled him, threw him to the ground and handcuffed him. [REDACTED] denied having a firearm or pointing a firearm at the officers.

**Witness [REDACTED] – IPRA Statement on July 19, 2015**

According to [REDACTED] on the date of the incident he woke up to the sound of two gunshots. The shots sounded as if they came from the gangway of his home. When he looked out of the window he saw his cousin, [REDACTED] fall on the stairs that lead to the gangway. His cousin appeared to be injured. [REDACTED] saw [REDACTED] get up and continue toward the stairs leading to the house. [REDACTED] made it up the stairs, where he met [REDACTED] who then held him. A white male officer approached and pointed a weapon at them. [REDACTED] put his hands in the air and told the officer not to shoot.

[REDACTED] stated that the officer grabbed [REDACTED] by the arm, pulled him down and handcuffed him. A short time after [REDACTED] was handcuffed, a second officer approached the house. [REDACTED] asked the officers what happened and one of them told him that [REDACTED] had a gun. The officer also told [REDACTED] that he called an ambulance.

**Witness Juan Ruiz**

According to Witness Juan Ruiz in a statement to IPRA on July 19, 2015, on the date of the incident he was leaving his residence at 2321 W. 21<sup>st</sup> Street at approximately 4:00 a.m. to go to work. As he was leaving, he saw a male, now known to be [REDACTED] walking westbound on the north side of 21<sup>st</sup> street. Ruiz described [REDACTED] as a Hispanic male weighing approximately 185 pounds and wearing a tan shirt.

Ruiz saw a marked police SUV drive eastbound on 21<sup>st</sup> Street. The SUV stopped near a fire hydrant on the north side of 21<sup>st</sup> Street. Ruiz believed one of the officers said something to [REDACTED]. The driver of the SUV exited the vehicle with his pistol in hand and yelled, "Stop. Stop. Stop," at [REDACTED]. According to Ruiz, the officer then fired three shots at [REDACTED] in rapid succession. The officer who was the passenger in the SUV was near the rear of the vehicle when the other officer fired his weapon. Ruiz stated that he did not see [REDACTED] point a firearm at the officers and that he did not believe [REDACTED] had a firearm. Ruiz stated that the entire incident happened very quickly and that only seconds passed from the time the officer exited the vehicle until the shots were fired.

Ruiz stated that after the officer fired his weapon, he no longer saw [REDACTED]. Ruiz then walked to his vehicle. He saw one of the officers with a flashlight searching between the houses as if he were looking for [REDACTED].

**b. Digital Evidence**

**OEMC Event Queries and Radio Transmissions** were collected and made part of this case file. The following is a summary of the relevant audio recording entries from July 19, 2015:

At 3:39:15 a.m., a male called 9-1-1 and spoke only in Spanish. He was connected to an interpreter. The male caller identified himself as [REDACTED] stated he was returning from work and stopped at a liquor store. He was approached by a Hispanic man wearing jeans and black sweater. The man had a gun and asked if he had money. [REDACTED] told the man, "No," and the man told him, "Get out of here." [REDACTED] stated that the man appeared to be Puerto Rican. [REDACTED] stated that he would like to speak to the police and arranged to meet officers at the Dunkin Donuts between Cermak and Western.

At 3:56:46 a.m., a male called 9-1-1 and reported shots fired. He stated that four or five shots were fired near 21<sup>st</sup> Street and Western Avenue.

At 3:57:36 a.m., a male called 9-1-1 and reported shots fired near 21<sup>st</sup> Street and [REDACTED] Avenue, specifically [REDACTED] W. 21<sup>st</sup> Street. He stated that three or four shots were fired. The operator asked if he saw or heard anything. The male caller stated, "Somebody said something in Spanish and they shot him."

At 3:57:38 a.m., a female called 9-1-1 and reported gunshots. She stated that she heard three shots on 21<sup>st</sup> Street between [REDACTED] Avenue and [REDACTED] Avenue.

Police Radio transmissions relevant to this incident begin with all units in the twelfth district being informed that there was a person with a gun near the Dunkin Donuts between Western and Cermak. The dispatcher stated that a man named [REDACTED] called 9-1-1 to report that a male Hispanic wearing a dark sweater and jeans pulled a gun on him and asked for money and then asked him to leave. [REDACTED] was waiting for responding officers at the Dunkin Donuts.

The dispatcher assigned unit 1231R to respond to Dunkin Donuts. Unit 1231R stated that they spotted the suspect. 1231R then radioed in "shots fired." 1231R then stated, "He's in the alley" and identified the direction of travel as east through the alley. The voice over the radio sounded as if the person was out of breath. 1231R then radioed "He's going back to 21<sup>st</sup>." 1231R then radioed in their location and again the person sounded out of breath. Another voice came on the radio and stated that a pistol was recovered and requested the attendance of a supervisor. The unit asked if the suspect was in custody and 1231R verified that the suspect was in custody. 1231R requested an ambulance.

Several units were assigned to respond. 1234R verified over the radio that a pistol was recovered at [REDACTED] W. 21<sup>st</sup> Street. The dispatcher asked if the ambulance should respond to the street or the alley. Thereafter, several voices over the radio stated that the ambulance is needed in the street.

#### c. Physical Evidence<sup>4</sup>

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**Crime Scene Processing Report** - The Chicago Police Department Forensic Firearms Lab received a Kahr Arms CM9 9-mm Luger semi-automatic pistol with the serial number obliterated by a pointed hand tool. Live rounds were found jammed in the chamber. Two shell casings were recovered from Officer Mikhail's weapon, one found in the front yard of [REDACTED] W. 21<sup>st</sup> Street and the other on the sidewalk in front on [REDACTED] W. 21<sup>st</sup> Street. A bullet fragment from Officer Mikhail's weapon was found on the fence at [REDACTED] W. 21<sup>st</sup> Street. Two fired bullets fired from Officer Mikhail's weapon were found. One was found on the sidewalk of [REDACTED] W. 21<sup>st</sup> Street and the other found in the alley near [REDACTED] S. Western Avenue.

**Crime Scene Photographs** – The photos depict the scene from various angles. The photographs, two of which are included below, depict multiple pictures of the location of the incident and marked evidence. The marked evidence includes but is not limited to: a Kahr, Model CM9, 9-millimeter semi-automatic pistol with rounds jammed in the chamber, multiple shell casings and fired bullets, a bullet fragment and various drops of blood and smeared blood.



**ISP Forensic Science Laboratory Reports** document the examination and results of DNA evidence. Laboratory results dated 25 May 2016 document that the DNA from [REDACTED] buccal standard matches the swab taken from the Kahr CM9 semiautomatic pistol.

**Property Inventory Reports** document the evidence recovered relative to this incident. This includes Inventory Reports #1348711, # 13487075, #13487152, #13487150, #13487140, #13487114, #13487093, #13487087, #13487085, #13487119, #13487091, #13487102, #13487134, #13487128, #13487125, #13487122, #13491549, #13487156, #13487121. Inventory Report #13487121 details [REDACTED] clothing recovered from the trauma observation area of John H. Stroger Hospital. Item #7552680 listed on the report is a long sleeve dark grey t-shirt.

**Medical Records** – Records from John H. Stroger Hospital indicate that [REDACTED] was admitted to the hospital on July 19, 2015, and discharged on July 24, 2015. [REDACTED] was admitted with five gunshot wounds including a wound to right thumb, which sustained a fracture, two wounds to the abdomen, more specifically a one in the left quadrant and one in the left flank, and two to the right thigh. Imagining of the wounds to the right thigh was negative for “any fractures or retained missiles.” Plain films of the abdomen “revealed no retained missiles.” [REDACTED] suffered a partial amputation of his right thumb. The medical records indicate that [REDACTED] used cocaine, with the last exposure at 3:00 p.m. in the afternoon prior to his admission. He was acutely intoxicated from cocaine use at the time of admission. “His intoxication and agitation [were] such that he could not give informed consent.”

#### d. Documentary Evidence<sup>5</sup>

**Arrest Report** - Per the Arrest Report, [REDACTED] was arrested on July 19, 2015 on the porch of [REDACTED] W. 21<sup>st</sup> Street and charged with attempted armed robbery with a firearm and two counts of aggravated assault of a peace officer with a weapon. He was indicted in two separate criminal cases that were still ongoing at the time of this report: 15 CR 12801-01 and 15 CR 12802-01.

**Tactical Response Report (TRR)** - Per the TRR, completed by Officer Mikhail on July 19, 2015, [REDACTED] did not follow verbal direction, fled, created an imminent threat of battery and used force and a weapon likely to cause death or great bodily harm. Officer Mikhail responded with member presence, verbal commands and a firearm.

**Officer's Battery Report (OBR)** – On the date, time and location of the incident Officer Mikhail was on duty in uniform, working with one partner in a squad car and responded to a call of a man with a gun. Officer Mikhail checked “Other” to indicate the manner of attack and indicated that the officer was at gunpoint.

**CPD Detective Supplementary Reports** - The Detective Supplementary report documents that detectives found [REDACTED] to be uncooperative and inaccurate. The report also states that the canvass returned negative results and attempts to obtain video footage were unsuccessful.

**Chicago Fire Department Ambulance Report -** [REDACTED] was found lying on his side and had been handcuffed by CPD. He was uncuffed immediately upon CFD arrival and ALS care was initiated. [REDACTED] sustained multiple gunshot wounds to the left upper quadrant and left flank, two to the right thigh and one to the right thumb. The narrative described [REDACTED] as "conscious but lethargic" and indicated that he could speak but would not answer questions. [REDACTED] remained conscious as he was transported to John H. Stroger Hospital.

## VI. ANALYSIS<sup>6</sup>

### I. Legal Standard

According to the relevant Chicago Police Department General Order that was in effect in July 2015:

A sworn member is justified in using force likely to cause death or great bodily harm only when he or she reasonably believes that such force is necessary:

1. to prevent death or great bodily harm to the sworn member or to another person (hereinafter, the "first prong" of the policy), or;
2. to prevent an arrest from being defeated by resistance or escape and the sworn member reasonably believes that the person to be arrested (hereinafter the "second prong" of the policy):
  - a. has committed or has attempted to commit a forcible felony which involves the infliction, threatened infliction, or threatened use of physical force likely to cause death or great bodily harm;
  - b. is attempting to escape by use of a deadly weapon or;
  - c. otherwise indicates that he or she will endanger human life or inflict great bodily harm unless arrested without delay.

General Order 03-02-03, § IIA.

Additionally, the use of deadly force is codified under 720 ILCS 5/7-5 (1986). The pertinent part of the statue states that:

"[a] peace officer, or any person whom he has summoned or directed to assist him, need not retreat or desist from efforts to make a lawful arrest because of resistance or threatened resistance to the arrest. He is justified in the use of any force which he reasonably believes to be necessary to effect the arrest and of any force which he reasonably believes to be necessary to defend himself or another from bodily harm while making the arrest. However, he is justified in using force likely to cause death or great bodily harm only when he reasonably believes that such force is necessary to prevent death or great bodily harm to himself or such other person..."

Finally, determinations regarding the potential use of excessive force, deadly or not, during an arrest, investigatory stop, or other “seizure” are properly analyzed under the Fourth Amendment’s objective reasonableness standard. The question is whether the officers’ actions are ‘objectively reasonable’ given the facts and circumstances confronting them, without regard to their underlying intent or motivation. *Graham v. Connor*, 490 U.S. 386, 397 (1989); see *Estate of Phillips v. City of Milwaukee*, 123 F.3d 586, 592 (7th Cir. 2003). Moreover, the reasonableness calculation “must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation.” *Graham*, at 396–97. “When an officer believes that a suspect’s actions [place] him, his partner, or those in the immediate vicinity in imminent danger of death or serious bodily injury, the officer can reasonably exercise the use of deadly force.” *Muhammed v. City of Chicago*, 316 F.3d 380, 683 (7th Cir. 2002) (quoting *Sherrod v. Berry*, 856 F.2d 802, 805 (7th Cir.1988) (*en banc*) and omitting emphasis).

The analysis of the reasonableness of an officer’s conduct must be grounded in the perspective of “a reasonable officer on the scene, rather than with the 20/20 vision of hindsight” and “allow for the fact that police officers are often forced to make split-second judgments- in circumstances that are tense, uncertain and rapidly evolving – about the amount of force that is necessary in a particular situation.” *Plumhoff v. Rickard*, 134 S. Ct. at 2020 (2014), quoting *Tennessee v. Garner*, 471 U.S. (1985) (internal quotation marks omitted).

## II. Legal Analysis

### A. Deadly Force Necessary to Prevent Death or Great Bodily Harm

The first prong of the policy permits the use of deadly force if the officer reasonably believes such force is necessary to prevent death or great bodily harm to the sworn member or another person. In this analysis, we must consider the reasonableness of the officer’s conduct given the totality of the circumstances. *Marion v. City of Corydon Indiana*, 559 F. 3d 700, 705 (7th Cir. 2009).

#### 1. Analysis of evidence that ██████████ had a deadly weapon

In this case, both Officer Mikhail and Officer Koch stated that a person, now known to be ██████████ failed to comply with verbal direction, pulled a firearm from his waistband and pointed it at Officer Mikhail. ██████████ denied possessing a firearm. The only civilian witness stated that he did not see ██████████ with a firearm.

However, a firearm was secured at the scene, inventoried under Inventory Report #1348711 and tested by the ISP. The testing concluded that ██████████ DNA was on the recovered firearm. The 9-1-1 calls and radio dispatch identify a person matching ██████████ description as having committed an armed robbery within approximately twenty minutes and within close physical proximity of the shooting. ██████████ physical description and the evidence recovered from ██████████ at the hospital, specifically a long sleeve dark grey t-shirt, is consistent with the description ██████████ gave the 9-1-1 operator and the Officer’s description of the

person described over the radio. The DNA evidence, the description of a suspect that matched [REDACTED] characteristics, and proximity in time to a robbery all indicate it is more likely than not that [REDACTED] had a firearm.

## 2. Analysis of Reasonable Belief Force Was Necessary to Prevent Death or Great Bodily Harm

Mere possession of a firearm does not in and of itself justify a reasonable belief that deadly force is necessary to prevent death or great bodily harm.

Officer Koch stated that [REDACTED] pulled the firearm from his waistband, [REDACTED] then pointed the weapon at him, then at Officer Mikhail. Officer Mikhail stated that [REDACTED] pointed the weapon at him from ten feet and as he fired at [REDACTED] “back peddled” away from him to approximately fifteen feet.

While [REDACTED] stated that he did not have a firearm and Ruiz stated that he did not see [REDACTED] with a firearm, the previous section provides the rationale for finding it is more likely than not that [REDACTED] had a firearm at the time of the shooting. We find no credible reason to discount both Officers’ statements that [REDACTED] at least pointed a firearm at Officer Mikhail, which would establish a reasonable belief that [REDACTED] could have caused death or great bodily harm.

There is no evidence establishing that [REDACTED] fired at either Officer, which would clearly be considered likely to cause death or great bodily harm. Due to the condition of the weapon recovered, it appears unlikely that [REDACTED] would have been able to fire his weapon at the time Officer Mikhail used deadly force. [REDACTED] firearm was recovered in slide lock, which indicates [REDACTED] would not have been able to quickly fire the weapon. Officer Mikhail stated he was not aware of this at the time he discharged his firearm.

Considering the totality of the circumstances, the lighting conditions that likely existed at that time of day, approximately 4:00 a.m., the distance of approximately ten feet and condition of the weapon (see photographs above), Officer Mikhail’s statement that he was not aware the firearm was in slide lock appears to be objectively reasonable. Furthermore, as shown in the photograph above, the weapon recovered had rounds jammed in the chamber, which would have significantly decreased the likelihood that [REDACTED] would have caused death or great bodily injury. We must evaluate the use of force based on the information the officer had at the time and not with the benefit of hindsight, there is no evidence to support a finding that Officer Mikhail was aware or should have been aware that [REDACTED] firearm had rounds jammed in the chamber. For this reason, [REDACTED] failure to fire would not reasonably decrease the threat level the Officer’s perceived at the time.

The physical evidence is consistent with this finding. Based on Inventory Report #1347075, it appears that Officer Mikhail fired three times. The medical records and available photographs do not provide any information regarding [REDACTED] injuries that contradicts the Officers’ accounts.

**VII. CONCLUSION**

Based on the analysis set forth above, COPA makes the following findings:

COPA has determined by a preponderance of the evidence that Officer Mikhail's use of deadly force against [REDACTED] was objectively reasonable as outlined in the Use of Force Model, state and federal law, and the Chicago Police Department's General Orders.

Officer	Allegation	Finding
Officer Zaya Mikhail	1. N/A	Use of deadly force was within CPD policy.

Approved:

Andrea Kersten

*Deputy Chief Administrator – Chief Investigator*

*2/28/18*

Date

Appendix A

## Assigned Investigative Staff

<b>Squad#:</b>	Squad 1
<b>Investigator:</b>	Jacqueline Hennard
<b>Supervising Investigator:</b>	Regina Holloway
<b>Deputy Chief Administrator:</b>	Andrea Kersten